

FILED DEC 3 12:10 USDC-ORP

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District
Name (under which you were convicted): DIAZ LOPEZ RODRIGO		Docket or Case No.: CR 06-446-1-JO
Place of Confinement: C.C.C.C. California City California / P.O. Box. 3001-0001/ 93504		Prisoner No.: 66812-065
UNITED STATES OF AMERICA		Movant (include name under which you were convicted): RODRIGO DIAZ LOPEZ
v.		

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Sentence entered by the United States District Court for the District of Portland Oregon, Sentence entered by the honorable Judge ROBERT E. JONES. (1000 S.W. 3th Av. P.O. 97204-2902)
 (b) Criminal docket or case number (if you know): CR 06-446-1-JO
2. (a) Date of the judgment of conviction (if you know): _____
 (b) Date of sentencing: 05-11-2007.
3. Length of sentence: (72)-months
4. Nature of crime (all counts): OFF/CHG: 8 USC 1326 (A)
AND (B) (2)
ILLEGAL RE-ENTRY COUNT 1.
5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____ **N/A**
- (2) Result: _____ **N/A**
- (3) Date of result (if you know): _____ **N/A**
- (4) Citation to the case (if you know): _____ **N/A**
- (5) Grounds raised: _____ **N/A**

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____ **N/A**
- (2) Docket or case number (if you know): _____ **N/A**
- (3) Date of filing (if you know): _____ **N/A**

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: _____

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: "INEFFECTIVE ASSISTANCE OF COUNSEL"

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See; Additional pages "EXHIBIT A" facts supporting
this claim.

(b) Direct Appeal of Ground One: A direct appeal was never filed on my behalf by my representative lawyer.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: N/A

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

1 RODRIGO DIAZ LOPEZ
No. 66812-065
2 California City Correctional C.
P.O. Box. 3001-0001
3 California City California, 93054.
4
5

6 "EXHIBIT A"
7

8 UNITED STATES DISTRICT COURT FOR
9 THE DISTRICT OF PORTLAND OREGON

10 UNITED STATES OF AMERICA) FACTS SUPPORTING EACH GROUND
Plaitiff,) ON WHICH PETITIONER CLAIMS
11) THAT COUNSEL'S REPRESENTATION
12 vs.) WAS IN-EFFECTIVE. (IAC).
13)
14 RODRIGO DIAZ LOPEZ)
Defendant)

15
16 Rodrigo Diaz Lopez, appeals to the United States
17 District Court, (JUDGMENT) entered in the above entitle
18 action on; May 11 of 2007.

19
20
21 Respectfully submitted this 24, of Nov. 2007.
22
23

24 Rodrigo Diaz Lopez
25 Rodrigo Diaz Lopez / Pro-se.
Defendant / Appellant
26 In Pro-se
27
28

1 A.- **STATEMENT OF FACTS.**

2 I.- Defendant Rodrigo Diaz Lopez, Defendant acting Pro-se in
3 this matter files a Motion Pursuant to 28 U.S.C. 2255, seeking
4 to Vacate, Set or Correct his Sentence.

5
6 II.- The Defendant on this Case has been charged with being
7 an Undocumented Person previously Deported after an Aggravated
8 Felony conviction, subsequently Sentenced to 72 months.

9
10 III.- Defendant Rodrigo Diaz Lopez currently confined at the
11 (C.C.C.C) / C.C.A. in California City CA.

12
13 B.- DEFENDANT HEREBY APPEALS THE EXCESSIVE SENTENCE AS
14 WELL AS OTHER PROCEEDINGS IN THIS CASE.

15
16 I.- Defendant specifically alleges that; Defense Counsel was
17 Ineffective because:

18
19 II.- Defendant was misled to sign a Plea Bargaining Counsel
20 verbally stated that the Plea Bargaining being signed was a Plea
21 Bargaining for (6) to (24) months.

22
23 III.- Defendant lacks knowledge on the English language Defendant
24 did not understand, comprehend nor was explained to him, by
25 defense Counsel the whole nature and Consequences of Plea.

26
27 IV.- Defendant Counsel did not conduct the accurate evaluation
28 which resulted in a (72) months sentence.

1 C.-

SUMMARY OF ARGUMENT

2
3 I.- On or about 11-04-2006, Rodrigo Diaz Lopez was appre-
4 hended by Border Patrol Agents. Defendant Rodrigo Diaz Lopez
5 was charged with deported allien found in the United States
6 in violation of 8 U.S.C. 1326.

7
8 II.- Subsequently attorney Mr. Keith Jordan , was retained
9 by defendant's family for the sume of 15,000, U.S. Dollars,
10 taken as an initiating payment 8,000, U.S. Dollars, and the
11 rest at the conclusion of the case.

12
13 III.- Defendant's family agreed to Mr. Keith Jordan's terms
14 when Mr. Keith Jordan told defendant and defendat's family that
15 Rodrigo Diaz Lopez , would reseive a sentence no less than (6)
16 and no greater than (24)-months.

17
18 IV.- Defendant was never informed on what approach Mr.
19 Keith Jordan would take on defendant's case, nor defendant was
20 accurate informed of any prospects, procedures on litigation
21 matters, . . . Counsel at all times failed to communicate with
22 Mr. Rodrigo Diaz Lopez, in regard to his case.

23
24 V.- Defendant is totally indigent in matters of the law,
25 defendant's attorney failed to clearly instruct defendant about
26 the full consequences of his plea. Subsequently defendant was
27 sentenced to a (72)-months term.

1 VI.- Defendant's Attorney Mr. Keith Jordan, failed to file
2 an appeal notice after sentencing, costing defendant to lose
3 his right for a direct appeal, therefore defendant Rodrigo
4 Diaz Lopez, brings this issue in front of this court for review
5 pursuant to title 28 U.S.C. 2255.

6
7 VII.- As a further proof, at the sentencing hearing, when
8 defendant Rodrigo Diaz Lopez, was asked by the sentencing Judge
9 honorable Judge Jones, if Rodrigo Diaz Lopez was aware of the
10 plea bargaing that he had signed, defendant Rodrigo Diaz Lopez
11 responded "NO", Judge Jones called for a break and give the
12 order to counsel to advice defendant Rodrigo Diaz, about
13 the plea bargain, defendant trusted and believe representative
14 attorney Keith Jordan, when privately communicated to defendant
15 that the prosecutor was going to recommend forty-four to fifty-
16 seven months, but not to worry; Attorney Keith Jordan once more
17 promised to defendant Rodrigo Diaz Lopez, that he would get
18 time surved, or a sentence no greater than (24)-months.

19
20 VIII.- Defendant Rodrigo Diaz, has stablished that the defen-
21 dant 'only' has an education skill level of (6)-years in Mexico
22 which is the equivalent to less than 1st. Year of Junior-high,
23 here in the United States;

24
25 IX.- Defendant rodrigo Diaz Lopez, speaks very limited porti-
26 ons of the english language;

27
28 X.- Defendant is not familiar with the law, defendant plased
all his trust on his representative counsel.

D.-

ARGUMENT.

I.- Defendant Rodrigo Diaz Lopez, Appeals his case and sentencing for several reasons. The first and most important reason being is; Ineffective Assistance of Counsel.

II.- Defendant's Counsel didn't conduct the accurate evaluation when Counsel told Defendant and Defendant's Family, that Rodrigo Diaz Lopez would get 6 to 24 months sentence; "Counsel performance was deficient and that deficient performance" Prejudiced the Defendant.

III.- Defendant Pleaded guilty under the presumption that he would get 6-24 months sentence; therefore Plea of Guilty was wrongfully induced, Rodrigo Diaz Lopez was wrongfully induced to Plea Guilty by representative Counsel by reason of a promise.

IV.- The Decision on Brandy v. U.S. 397 U.S. 742, 751.90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970). Disposes of petitions claims that he was improperly induced to Plea Guilty.

V.- The Supreme Court has generally noted that a petitioner represented by Counsel "Is bound by his Plea and his conviction" unless he can allege and prove serious derelictions on the part of Counsel sufficient to show that his Plea was not after all a knowing and intelligent Act. Mac Mann v. Richardson, 397 U.S. 759, 774 90 S. Ct. 1441, 1450, 25 L. Ed. 2d 763 (1970).

1 VI.- In Mc Queen v. Swenson Supra. The court recognized the
2 language and standars set for by other Circuits concerning
3 ineffective Assistance of Counsel the court also acknowledged
4 the logic of the American Bar Association "Standards" relating
5 to the Procecutiion Function and the "Defence Function" (Aproved
6 Draft 1971). The higher court held that under existing standards
7 of this circuit the Failure to make a reasonable evaluation and
8 Investigation by Counsel may amount to Ineffective Assistance
9 of Counsel.

10

11 VII.- Representative Attorney Mr. Keith Jordan never send one
12 piece of legal mail explaining sentencing guidelines, the point
13 system,...etc. Than upon seeing Defendant prior to
14 sentencing hearing Mr. Keith Jordan persuasively had defendant
15 sing a Plea Barging on which Mr. Keith Jordan verbally stated
16 that it was a time served Plea Barging .

17 * This promise was also given to Rodrigo Diaz Lopez's
18 Family members. Family was told by Mr. Keinth Jordan that
19 Rodrigo Diaz Lopez would get time served.

20

21 VIII.-Defendant Counsel must at least as well as retained
22 Lawyer with ordinary training and skill in the criminal law
23 must conscientiously protect his client's interest undefected
24 by conflicting considerations and defense Counsel must investi-
25 gate all apparently substantial defenses available to the
26 Defendant and must assert them in a proper and Timely Manner
27 U.S.C.A Const. Amend. 6 Agee v. State 474 S.W. 2d at 820-21.

28

1 IX.-Defendant's family members are witness to Mr. Keith
 2 Jordan's promise. That is why this was such a shock to defen-
 3 dant Rodrigo Diaz Lopez, and all of his family when defendant
 4 was sentenced to (72)-months, for illegal re-entry, all
 5 members were so completely taken aback by this, as it was
 6 completely unexpected compered to what were led to believe and
 7 told by attorney Mr. Keith Jordan.

8
 9 X.- If defendant Rodrigo Diaz Lopez had been accurately
 10 adviced and informd of prospects in his legal litigation matters
 11 he would easily accept (72)-months or any amount of time.
 12 But the way he and his family were so blatantly lied to and
 13 misled by attorney Mr. Keith Jordan, is a **gross of injustice**.

14
 15 XI.- Based on these facts this case need to be more fully
 16 explored, and because less stringent view is taken of the
 17 existing presedents in this matters concerning Inefective
 18 Assistance of Counsel, the proper procedure is to remand this
 19 issue for consideration in light of holdings in McQueen vs.
 20 Swenson, Supra. The Court recognized the language and standards
 21 set for by other courts/(circuits) concerning Ineffective Assis-
 22 tance of Counsel.

23
 24 XII.- Under first prong of the Ineffective Assistance of
 25 Counsel, found in Strickland vs. Washington 466U.S. 668 104
 26 S. Ct. 2052,80 L.Ed. 2d 674 (1984). If the advicement of counse
 27 fell below the objective standar presumption . . . Counsel's
 28 conduct didn't fall within the wide range of reasonable profe-
 sional assistance, faillure could be consider as Ineffective

VIII.- Under second prong petitioner was prejudice by counsel's error and evaluation of the case. Fields v. Woodford , 309 F.3d at 1107-08 : Wildman v. Johnson, 261 F.3d 832 (9th. Cir. 2001).

XIV.- "Prejudice occurs where there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different".

XV.- It is also clear that Strickland analysis applies to claims of (Ineffective Assistance of Counsel) involving counsel's advice offered during the plea taken process. Riggs v. Fairman 339, F.3d 1179, 1182 (9th Cir.2005).

It is ineffective to fail to advice a client enter a plea bargain whe is clearly in the best interest. . . . If that failure was outside the wide range of professionally competent assistance; See, United States v. Leonti, 326, F.3d 1111, 1117 (9th Cir.2003).

XVI.- This Court should consider defendant's claim (IAC), also consider defendant's position, and as well as defendant's family adverse position , . . , due to the unprofessional, manner Mr. Keith Jordan handled defendant's case.(1)*

(1) After sentencing hearing defendant's family confronted Mr. Keith Jordan requesting an explanation of the unexpected (72)-month sentence, compared to what they were led to believe (6)-(24)-months sentence. Attorney Keith Jordan, could not give any clear explanation but instead he requested the remainder of the 15,000 \$ that both parties agreed to; Defendant's family told Mr. Jordan that since he didn't comply with what he promised to do in

1 "CONCLUSION"

2
3 For the foregoing reasons this honorable Court should grant
4 defendant's claim and remand this case for further evaluation
5 and review; If ineffectiviness is found, this court should
6 vacate the (72)-month Sentence and impose a sentence in accor-
7 dance with a violation of 8 U.S.C. 1326(a), which carries a
8 maximum of (24)-months sentence.

9
10 Also serving the criteria set for under 18 U.S.C. § 3553(a).

11
12 SENTENCE OF 24 MONTHS IS REASONABLE AND SUFFICIENT SENTENCE
13 "BUT NOT GREATER THAN NECESSARY".

14
15
16 *Respectfully Submitted 24 of Nov 2007.

17
18 Rodrigo Diaz Lopez
19 Diaz Lopez Rodrigo
20 Defendant / Appellant
21 Pro-se.
22
23

24 regard to the (6)to(24)-months sentence; He would only reselve
25 from them the initial 8,000 \$ given at the begining of the case.
26 Subsequently Mr. Keith Jordan Filed a Law-suit againts defen-
27 dant's family for the reminder sum of 7,000 \$. Due to tha fact
28 defendant's family are at risk to lose their dwelling, (home-
trailer).

CERTIFICATE OF SERVICE / OR MAILING

CASE NAME: UNITED STATES OF AMERICA VS. RODRIGO DIAZ LOPEZ

CASE NUMBER: CR 06-446-1-JO

I, the undersigned, herby affirmed that on this 27 day of Nov. 2007, I deposited in the recepticle for the United States mail provided at this Institution for inmates, first class pre-paid postage, in a sealed envelope and addressed to:

United States District Court
740 United States Courthouse
1000 S.W. Third Avenue
Portland OR. 97204-2902.

a true and correct copy of the attached document(s) identified as follows:

(1)-original and (2)-copies, of (Motion to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody) Motion Under 28 U.S.C. § 2255.

In accordance with Houston V. Lack 487 U.S. 266 (1988) these documents are deemed filed and served as of this date. Pursuant to 28 U.S.C. §1746(2). I further declare under the penalty of perjury that the foregoing is correct and true.

DATED: 11-27-07

Rodrigo Diaz Lopez
AFFIANT Rodrigo Diaz Lopez
Defendant / Appellant
In Pro-se

Diaz Lopez Rodrigo
NO. 66812-065
California City Correctional C.
P.O. Box. 3001-0001
California City CA. 93054.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF PORTLAND OREGON

UNITED STATES OF AMERICA
Appelles / Plaintiff

Case No. 06-446-1-JO

vs.

MOTION FOR APPOINTMENT
OF COUNSEL ON APPEAL.

RODRIGO DIAZ LOPEZ
Appellant / Defendant

Comes now defendant Rodrigo Diaz Lopez, In Pro-se, and
files this motion for appointment of counsel on appeal.

On or about 05-11-2007, Rodrigo Diaz Lopez, was sentenced
by the honorable Judge Robert E. Jones, to a prison term of
(72)-months. Defendant hereby petitions the court for
appointment of counsel on appeal.

"REASONS WHY DEFENDANT CANNOT REPRESENT HIM SELF IN APPEAL".

I.- Defendant is an Indigent Person

II.- Defendant first language is not english language, also
speaks very limited portions of the english language.

III.-Defendant is not familiar with the law.

For the foregoing reasons defendant respectfully request that
this motion be granted in the interest of justice.

Executed (signed on) 11-27-07.

CERTIFICATE OF SERVICE / OR MAILING

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CASE NUMBER: 06-446-1-JO

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(MOTION FOR APPOINTMENT OF COUNSEL)

In accordance with Houston V. Lack 487 U.S. 266 (1988) these documents
are deemed filed and served as of this date. Pursuant to 28 U.S.C.
§1746(2). I further declare under the penalty of perjury that the
foregoing is correct and true.

DATED: 11-27-07

Rodrigo Diaz Lopez
AFFIANT Rodrigo Diaz Lopez
Defendant / Appellant
In Pro-se.